

Federal Communications Commission

DA 04-965

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 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-162
Table of Allotments,)	RM-10723
FM Broadcast Stations.)	
(Linden and Marion, Alabama))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 12, 2004

Released: April 14, 2004

By the Assistant Chief, Audio Division:

1. At the request of Beckham Palmer, III, Receiver¹ ("Petitioner"), licensee of Station WNPT-FM Linden, Alabama, the Audio Division has before it a *Notice of Proposed Rule Making*² proposing the reallocation of Channel 275C2 from Linden to Marion, Alabama. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if reallocated to Marion. After the record closed, John Sisty Enterprises, Inc. filed a Reaffirmation of Statement of Interest and Intent to Apply.

2. The proposed reallocation was filed pursuant to Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.³ In considering a reallocation proposal, we compare the existing to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁴ In support of the proposal, petitioner states that the reallocation would provide Marion (population 3,511)⁵ with its first competitive local service and its first FM transmission service, triggering priority (4)—other public interest

¹ On November 18, 2003, the license of Station WNPT-FM was assigned to John Sisty Enterprises, Inc.

² *Linden and Marion, Alabama*, 18 FCC Rcd 414377 (2003).

³ See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

⁴ See 90 FCC 2d 88 (1982). The FM allotment priorities are (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

⁵ All population figures are taken from the 2000 U.S. Census.

matters. Petitioner further states that the reallocation of Channel 275C2 to Marion would provide the surrounding area with improved FM service from the only full-time, full-power facility licensed to the community. The reallocation is buttressed by the fact that it will provide the more populous community of Marion with a nighttime service.⁶ On the other hand, the reallocation would not deprive the smaller community of Linden (population 2,424) of its sole local unlimited time service, because Station WINL(FM) would remain licensed to the community. We recognize the reallocation will result in a loss area of 3,182 square kilometers (1,229 square miles) encompassing a population of 13,952 persons, of which 99 square kilometers (38.2 square miles) encompassing a population of 780 persons will have four services. However, the gain area will provide additional service to an area of 3,195 square kilometers (1,229 square miles) encompassing a population of 54,234 persons, a net gain of 40,282 persons. Moreover, since the reallocation of Channel 275C2 to Marion would not be in or near an urbanized area, no *Tuck* analysis is required.⁷

3. We believe the public interest would be served by reallocating Channel 275C2 to Marion, Alabama, since it would provide the community with its first local FM transmission service and allow Station WNPT-FM to expand its service area. Channel 275C2 can be reallocated to Marion in compliance with the Commission's minimum distance separation requirements without the imposition of site restriction 9 kilometers (5.6 miles) northwest at petitioner's requested site.⁸ In accordance with Section 1.420(i) of the Commission's Rules, we modify Station WNPT-FM's license to specify operation on Channel 275C2 at Marion, Alabama, as its new community of license.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective, June 1, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Linden, Alabama	253C1
Marion, Alabama	275C2

5. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of John Sisty Enterprises, Inc., Station WNPT-FM, Linden, Alabama, IS

⁶ While Station WJUS(AM) is currently licensed to Marion, it is authorized to operate with a power of only 0.034 kilowatts during the nighttime hours. Thus, Marion currently has no cognizable locally licensed nighttime service.

⁷ See *Long Beach and East Los Angeles, California*, 10 FCC Rcd 28672 (1995); see also *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951), *RKO General, Inc.*, 5 FCC Rcd 3222 (1990); and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁸ The coordinates for Channel 275C2 at Marion are 32-41-00 North Latitude and 87-23-39 West Longitude.

MODIFIED to specify operation on Channel 275C2 at Marion, Alabama, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, John Sisty Enterprises, Inc., licensee of Station WNPT-FM, is required to submit a rule making fee addition to the fee required for the application to effect the change in community of license.

7. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

John Sisty Enterprises, Inc.
3738 Carlsbrooke Drive
Birmingham, Alabama 35226
(Licensee of Station WNPT-FM)

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau